

STATE OF VERMONT
BOARD OF MEDICAL PRACTICE

In Re:)	
DAVID S. CHASE,)	Docket No. MPC 15-0203, <u>et al.</u>
Respondent)	

DECISION ON RESPONDENT'S MOTION TO RECONSIDER

Respondent has filed a Motion to Reconsider dated 8/23/04, in which he requests the Board to reconsider its 8/17/04 Decision regarding access to medical records and eye examinations. The State has filed a Memorandum in Opposition dated 8/25/04.

The Board Hearing Panel met to deliberate on the motion on September 1, 2004, and included James D. Cahill, M.D.; Patricia A. King, M.D., Ph.D.; Sharon L. Nicol, Public Member; Katherine M. Ready, Public Member; Toby Sadkin, M.D.; and John B. Webber, Esq., Public Member. Phillip J. Cykon, Esq. served as Presiding Officer for the Board. Respondent and his counsel, and the Assistant Attorney General were not present for deliberation.

Respondent reiterates that he is entitled to receive certain medical records and that the certain witnesses should submit to eye examinations. While acknowledging that neither the Board nor the Attorney General's Office can compel these things to happen, he contends that if they don't happen, the witnesses should be excluded from testifying at the disciplinary hearing. Respondent further contends that the State will rely on these medical records and eye examinations, so he must have the same access to these matters.

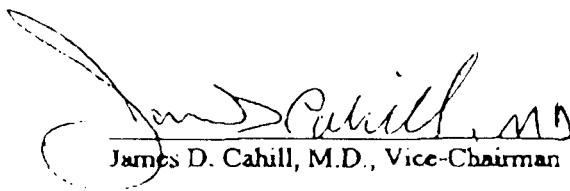
As set forth in our earlier decision, the Department of Health, the Medical Board, and the Attorney General's Office are required by law to provide to the Respondent all information in their possession that pertains to the Respondent and the charges filed against him. 26 V.S.A. § 1318(e). The Attorney General's Office has represented that they have provided Respondent with such information. Respondent has offered no evidence to establish that he has not received what he is entitled to receive. Respondent stated in his original motion that nearly all of the complaining witnesses have been deposed and have testified at length regarding their medical conditions and treatments by Respondent and other physicians. Respondent is entitled to subpoena any witnesses and any material that he seeks, and he concedes that he has been doing that. Regarding the eye-examinations Respondent seeks, such exams would be irrelevant to the issue of the condition of the patient's eyes at the time Respondent examined them and made his recommendations. Based on the record before the Board at this stage of the proceedings, there is no support for the exclusion of any witnesses. Indeed, forcing witnesses into the position that Respondent requests would most certainly have a chilling effect on a person's desire to make a complaint to the Board.

Respondent's reliance on the law regarding civil medical malpractice does not compel the Board to exclude witnesses. The complaining witnesses are not parties in this administrative case against Respondent. The Board's purpose is to protect the public, not to advance legal action for damages. Furthermore, the cases upon which Respondent relies are distinguishable from the situation before the Board. In Missouri v. Skillhorn, 944 S.W.2d 877 (Mo. 1997), a criminal case, a witnesses' testimony was excluded only after an attorney repeatedly refused to comply with a judge's specific order to allow opposing counsel to examine a file containing medical records. In New Mexico v. Luna, 921 P.2d 950 (N.M. 1996), also a criminal case, witnesses' testimony was excluded only after the State failed to comply with two discovery orders that ordered psychotherapy records to be submitted for in camera inspection. Nothing close to those facts has occurred in the present case before the Board.

For these reasons, and for the reasons stated in our original decision, Respondent's Motion to Reconsider is unanimously **DENIED**.

SO ORDERED.

FOR THE BOARD OF MEDICAL PRACTICE:


James D. Cahill, M.D., Vice-Chairman

9/2/04
Date